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REMARKS

Claims 47-86 and 88-101 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

In the Office Action, the Examiner has indicated that claims 91-101 have been allowed and that claims 50, 53, 56, 59, 61, 65, 70, 74 and 84 define patentable subject matter. Applicants would like to thank the Examiner for that indication.

In the Office Action, claims 102-104 have been withdrawn from consideration as lacking unity of invention with the remaining claims in the application. Applicants have canceled claims 102-104 to expedite prosecution, but reserve the right to file such claims in a divisional application at a later date.

Claims 47-49, 69, 71, 72, 77 and 78 have been rejected as being unpatentable under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,499,271 to Lastovich et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 47 defines an apparatus for sealing food containers using a sealing film, the apparatus comprising a base and a container holder for holding a food container. The container holder is configured to be moved relative to the base between a loading position and a sealing position. A heater platen positioned within the base. A handle is rotatably attached to the base to rotate between a loading position and a sealing position. The handle has a cam within the base. A pressure applicator is positioned between a portion of the cam and a surface of the heater platen whereby, as the handle is rotated, the cam rotates and presses against the pressure applicator, which, in turn, applies pressure to the heater platen causing the heater

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platen to move into engagement with the sealing film to thereby seal the sealing film to portions of the food container when the container holder is in the sealing position.

The prior art of record does not disclose the above noted features of claim 47. Specifically, the Lastovich et al. '271 patent does not disclose a handle having a cam within a base along with the remaining features of claim 47. According to the Office Action, the Lastovich et al. '271 patent includes "a cam 140 connecting the handle to a pressure applicator 138." However, the cammed mechanical linkage 140 connecting the handle 136 to the actuator rod 138 of the Lastovich et al. '271 patent is not located within any base. Moreover, Applicants submit that the Office Action implicitly admits, in the rejection of claim 55, that the linkage 140 of the Lastovich et al. '271 patent does not include any cam within a base as defined in claim 47. Accordingly, claim 47 is in condition for allowance. Furthermore, claims 48 and 49 depend from claim 47, and since claim 47 defines patentable subject matter as discussed above, claims 48 and 49 define patentable subject matter. Accordingly, claims 47-49 are in condition for allowance.

Claim 69 defines an apparatus for sealing food containers using a sealing film. The apparatus comprises a base and a container holder for holding a food container. The container holder is configured to hold a roll of the sealing film such that a portion of the sealing film may be unrolled and pulled over the food container. A heater platen is positioned within the base. A pressure applicator is positioned on a surface of the heater platen wherein the pressure applicator applies pressure to the heater platen causing the heater platen to move into engagement with the sealing film to thereby seal the sealing film to portions of the food container.

The prior art of record does not disclose the above noted features of claim 69. Specifically, Applicants submit that the Lastovich et al. '271 patent does not disclose a container holder for holding a food container and being configured to hold a roll of sealant film such that a portion of the sealant film may be unrolled and pulled over the food container, along with the remaining features of claim 69. According to the Office Action, the Lastovich et al. '271 patent includes a container holder 106. However, Applicants submit that the holder

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106 is not configured to hold a roll of sealant film as claimed in claim 69. Accordingly, claim 69 is in condition for allowance.

Claims 71, 72, 77 and 78 depend from claim 69, and since claim 69 defines patentable subject matter as discussed above, claims 71, 72, 77 and 78 define patentable subject matter. Furthermore, in regard to claim 72, the prior art of record does not disclose a container holder that includes legs extending from a sheet to support the container holder on a surface. Notably, the holder 106 of the Lastovich '271 patent does not include any legs. Furthermore, the prior art of record does not disclose a cam within a base as claimed in claim 78 and as discussed above in regard to claim 47. Accordingly, claims 71, 72, 77 and 78 are in condition for allowance.

Claims 51, 52, 54, 55, 57, 58, 60, 62-64, 66-68, 73, 75, 76, 79, 80-83 and 85-90 have been rejected as being unpatentable under 35 U.S.C. §103(a) as being unpatentable over the Lastovich et al. '271 patent in view of U.S. Patent No. 3,378,991 to Anderson. As further discussed below, Applicants respectfully submit that a *prima facie* case of obviousness has not been established. The test for obviousness has recently been addressed by the U.S. Supreme Court in *KSR Int'l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). In its decision, the Supreme Court stated that the teaching-suggestion-motivation (TSM) standard developed by the Federal Circuit was no longer the sole test for determining obviousness. Nevertheless, the Court indicated that the TSM test provides helpful insights as to the obviousness of the invention. With respect to the TSM test, the U.S. Patent and Trademark Office, which had adopted that test, set forth the requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.***

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). [emphasis added]

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The U.S. Supreme Court held that the TSM standard was not the sole standard for finding obviousness, one element to the finding of a *prima facie* case of obviousness is common to both the TSM standard and the standards that may otherwise fall within the per view of the *KSR* decision. Specifically, each and every element of the claimed invention must still be found in the prior art. As will be set forth below, there are elements of the claimed invention that are missing in their entirety from the cited prior art.

Further, with respect to the recent Supreme Court decision in *KSR Int'l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007), the Deputy Commissioner for Patent Operations has issued a memo advising the examiners that “in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.”

Claims 51, 52, 54, 55, 57, 58, 60, 62-64 and 66-68 depend from claim 47, and since claim 47 defines patentable subject matter as discussed above, claims 51, 52, 54, 55, 57, 58, 60, 62-64 and 66-68 define patentable subject matter. Furthermore, Applicants submit that these claims are allowable for the further reasons set forth below.

Claim 55 depends from claim 47 and further states that the base comprises two substantially vertical side panels, with the cam being mounted between the side panels. Applicants submit that it would not have been obvious to one skilled in the art to enclose the device of the Lastovich et al. '271 patent to protect a user from accidental access to the interior of the device as set forth in the Office Action. First, the interior of the device of the Lastovich et al. '271 patent is already protected such that accidental access to the interior of the device is prevented. Second, the cam 140 is not mounted between any side panels. Third, any side panels added to the Lastovich et al. '271 patent would prevent access to the holder 106 such that it is not obvious to modify the Lastovich et al. '271 patent to provide any such side panels as set forth in the Office Action. Accordingly, claim 55 is in condition for allowance.

Claim 57 depends from claim 55 and further states that the side panels each have elongated opposing grooves on inner surfaces thereof, the opposing grooves extending substantially horizontally and opening to a front of the base to receive side edges of the

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container holder such that the container holder is horizontally slidable within the base. The prior art of record does not disclose and it is not obvious to include an opening to a front of a base. First, the rejection of claim 55, the Office Action has added additional side panels and no such grooves are included in these additional side panels. Second, the Lastovich et al. '271 patent does not expressly or necessarily disclose grooves that open to a front of a base as claimed in claim 57 along with the remaining features of claims 57. Accordingly, claim 57 is in condition for allowance.

Claim 58 depends from claim 57, and further states the opposing grooves are U-shaped with one leg of each groove opening to a front of the base to allow the container holder to be slid therein, with the container holder dropping to the other leg of each groove when the container holder is fully inserted into the base. Applicants submit that none of the prior art of record has disclosed any U-shaped legs. Notably, the Lastovich et al. '271 patent clearly does not disclose any such grooves. Accordingly, claim 58 is in condition for allowance.

Claim 60 depends from claim 47 and states that the heater platen comprises a metal plate and a heater blanket provided on an upper surface of the metal plate. Applicants submit that the prior art of record does not disclose any such heater blanket. Accordingly, claim 60 is in condition for allowance.

Claim 63 depends from claim 62, and further defines the container holder as including legs extending from a sheet to support the container holder on the surface. Applicants submit that neither the Lastovich et al. '271 patent nor the Anderson '991 patent include any such container holder with legs. Furthermore, the Office Action has not identified any legs in the Lastovich et al. '271 patent or legs added to the disclosure of the Lastovich et al. '271 patent. Accordingly, claim 63 is in condition for allowance.

Claim 64 depends from claim 47 and further states that the container holder includes a curved section configured to hold a roll of sealant film such that a portion of the sealant film may be rolled and pulled over the food container. Applicants submit that neither the Lastovich et al. '271 patent nor the Anderson '991 patent includes any such curved portion on a container holder. Accordingly, claim 64 is in condition for allowance.

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Claim 66 depends from claim 47 and further includes a cutting blade mounted to the heater platen for cutting the sealant film when the heater platen engages the sealant film. According to the Office Action, it would have been obvious to one skilled in the art to provide a cutter on the heater platen of the Lastovich et al. '271 patent as shown by the Anderson '991 patent to automatically cut the film. However, Applicants submit that it is not obvious to make any such combination. As noted in the Office Action, the Lastovich et al. '271 patent only discloses manually cutting the film. Applicants submit that the Lastovich et al. '271 patent manually separates the lid and then manually places the lid on top of the container because the lids have to be separated from the roll before they can be connected to the container. Notably, the lids could not continue to be connected to the container during the initiation of the sealing process as any such roll of film would obstruct use of the handle 136, thereby preventing actuation of the handle 136 and use of the device of the Lastovich et al. '271 patent. Accordingly, Applicants submit that it is not obvious to combine the references as set forth in the Office Action as such a combination would prevent use of the device of the Lastovich et al. '271 patent, even as modified as set forth in the Office Action. Finally, even though the Lastovich et al. '271 patent discloses use of a conveyor, any such conveyor does not necessarily envision use of a cutter connected to heater platen as the lids could continue to be manually placed on the containers along with placing of the containers on the conveyor and placing of the food in the containers. Accordingly, Applicants submit that claim 66 is in condition for allowance.

Claim 67 depends from claim 47 and further includes a cutting blade mounted to the container holder for cutting the sealing film. Applicants submit that neither the Lastovich et al. '271 patent nor the Anderson '991 patent include a cutting blade mounted to a container holder. Accordingly, claim 67 is in condition for allowance.

Claim 68 depends from claim 67, and further states that the cutting blade is slidable in two directions along the container holder and configured to cut the sealing film as a cutting blade is slid in each direction. First, as discussed above in regard to claim 67, neither the Lastovich et al. '271 patent nor the Anderson '991 patent include any cutting blade on a

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container holder. Second, neither of these patents include a cutting blade that is slidable in two directions along a container holder. Accordingly, claim 68 is in condition for allowance.

Claims 73, 75 and 76 depend from claim 69 and since claim 69 defines patentable subject matter as discussed above, claims 73, 75 and 76 define patentable subject matter. Furthermore, in regard to claim 73, neither the Lastovich et al. '271 patent nor the Anderson '991 patent includes a container holder including a curved section configured to hold a roll of sealing film as discussed above in regard to claim 64. Moreover, in regard to claim 65, neither the Lastovich et al. '271 patent nor the Anderson '991 patent includes a cutting blade mounted to a container holder as discussed above in regard to claim 67. Furthermore, in regard to claim 75, neither the Lastovich et al. '271 patent nor the Anderson '991 patent includes a cutting blade slidable in two directions along a container holder as discussed above in regard to claim 68. Accordingly, claims 73, 75 and 76 are in condition for allowance.

Claim 79 defines an apparatus for sealing food containers using a sealing film comprising an apparatus for sealing food containers using a sealing film. The apparatus comprises a base, a container holder for holding a food container and a heater platen positioned within the base. A pressure applicator positioned on a surface of the heater platen, wherein the pressure applicator applies pressure to the heater platen causing the heater platen to move into engagement with the sealing film to thereby seal the sealing film to portions of the food container. A cutting blade is mounted in front of the heater platen for cutting the sealing film.

Applicants submit that claim 79 is not obvious over the prior art of record. Specifically, as discussed above in regard to claim 66, Applicants submit that it is not obvious to combine the Lastovich et al. '271 patent with the Anderson '991 patent as set forth in the Office Action as such a combination would prevent use of the sealing machine of the Lastovich et al. '271 patent. Accordingly, claim 79 is in condition for allowance.

Claims 80-83 and 85 depend from claim 79 and since claim 79 defines patentable subject matter as discussed above, claims 80-83 and 85 define patentable subject matter. Furthermore, in regard to claim 80, neither the Lastovich '271 patent nor the Anderson '991 patent includes a heater platen comprising both a metal plate and a heater blanket as discussed above in regard to claim 60. Moreover, in regard to claim 82, neither the Lastovich et al. '271

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patent nor the Anderson '991 patent includes a container holder including legs as discussed above in regard to claim 63. Furthermore, in regard to claim 83, neither the Lastovich et al. '271 patent nor the Anderson '991 patent includes a container holder including a curved section as discussed above in regard to claim 64. Moreover, in regard to claim 85, neither the Lastovich et al. '271 patent nor the Anderson '991 patent includes a cutting blade slidable in two directions along a container holder. Accordingly, claims 80-83 and 85 are in condition for allowance.

Claim 86 defines an apparatus for sealing food containers using a sealing film, the apparatus comprising, a base and a container holder for holding a food container. The container holder is configured to be moved relative to the base between a loading position and a sealing position. A heater platen is positioned within the base. A pressure applicator is positioned on the heater platen wherein the pressure applicator applies pressure to the heater platen causing the heater platen to move into engagement with the sealing film to thereby seal the sealing film to portions of the food container when the container holder is in the sealing position. The pressure applicator includes a resilient member for applying resilient pressure to the heater platen. The heater platen comprises a metal plate and a heater blanket provided on an upper surface of the metal plate.

Applicants submit that the subject matter of claim 86 is not obvious over the cited prior art. Specifically, the prior art of record does not disclose and it is not obvious to include a heater platen comprising a metal plate and a heater blanket along with the remaining features of claim 86. Neither the Lastovich et al. '271 patent nor the Anderson '991 patent discloses a heater platen comprising both a metal plate and a heater blanket. Accordingly, claim 86 is in condition for allowance.

Claims 88-90 depend from claim 86, and since claim 86 defines patentable subject matter as discussed above, claims 88-90 define patentable subject matter. Furthermore, in regard to claim 88, neither the Lastovich et al. '271 patent nor the Anderson '991 patent disclose a cutting blade mounted to a container holder. Furthermore, in regard to claim 89, neither the Lastovich et al. '271 patent nor the Anderson '991 patent disclose a cutting blade

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mounted to a container holder that is slidable in two directions along the container holder.

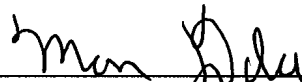
Accordingly, claims 88-90 are in condition for allowance.

All pending claims 47-87 and 89-101 are believed to be in condition for allowance and a Notice of such is earnestly solicited.

Respectfully submitted,

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Date



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